

**A Batu Kawan Bhd v Pentadbir Tanah Daerah
 Seberang Perai Selatan**

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO P-01-180
OF 1995

**B NH CHAN, ABU MANSOR AND ABDUL MALEK AHMAD JJCA
 25 APRIL 1998**

*Land Law — Acquisition of land — Compensation — Agricultural land — Poor
location and communication — Appellant claimed RM40,000 per acre — Whether trial
judge was correct in awarding RM15,000 per acre*

**C The subject land ('the land') is situated in Pulau Batu Kawan
 approximately 27km to the south of Butterworth town. In October
 1990, a bridge to the island was being built and was scheduled to be
 ready in April 1992. According to the town planner, the use of the
 land was for agriculture and the highest use was for animal husbandry.**
**D The planner opined that the land do not have good development
 potential because of the then shortcomings of the land and valued
 the land based on his opinion that the land was for agriculture.**

**E The appellant submitted that the land had good potential as
 industrial land which fact was not denied by the state legal adviser.
 However, the material consideration was whether the land had
 immediate potential or whether the potential was remote. Based on
 an earlier case decided in 1995, the trial judge fixed the value of the
 land at RM15,000 per acre. The appellant appealed against this
 award, claiming RM40,000 per acre for the land.**

F Held, dismissing the appeal:

**G The trial judge considered that the claim of the applicant for
 RM40,000 per acre was not appropriate, as the land presently could
 only be used for agriculture and its remoteness as the bridge being
 built was still under construction and not ready, and the best potential
 for the land was for animal husbandry. In short, the value of the land
 therefore could not be equated to mainland land in Seberang Perai.
 In this case, the judge had held that the award of RM15,000 was fair,
 all things considered. Since counsel for the appellant had failed to
 persuade the court otherwise, there was no good or valid reason to
 disturb the judgment of the learned trial judge (see p 208D-G).**
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[Bahasa Malaysia summary]

**I Tanah yang diperhalkan ('tanah tersebut') terletak di Pulau Batu
 Kawan kira-kira 27km ke selatan bandar Butterworth. Pada bulan
 Oktober 1990, sebuah jambatan ke pulau tersebut dibina dan
 dijadualkan siap pada bulan April 1992. Menurut perancang bandar,
 penggunaan tanah tersebut adalah untuk pertanian dan penggunaan
 tertinggi adalah untuk penternakan haiwan. Perancang tersebut**

berpendapat bahawa tanah tersebut tidak mempunyai potensi pemajuan yang baik disebabkan kekurangan tanah tersebut pada ketika itu dan menilai tanah tersebut berdasarkan pendapat beliau bahawa tanah tersebut adalah untuk pertanian.

Perayu berhujah bahawa tanah tersebut mempunyai potensi yang baik sebagai tanah perindustrian yang pada hakikatnya tidak disangkal oleh penasihat undang-undang negeri. Namun demikian, pertimbangan material adalah sama ada tanah tersebut mempunyai potensi langsung atau sama ada potensi adalah terpencil. Berdasarkan kes lebih awal yang diputuskan pada tahun 1995, hakim perbicaraan menetapkan nilai tanah tersebut pada harga RM15,000 seekar. Perayu merayu terhadap award ini, dengan menuntut RM40,000 seekar untuk tanah tersebut.

Diputuskan, menolak rayuan:

Hakim perbicaraan mempertimbangkan bahawa tuntutan pemohon untuk RM40,000 seekar adalah tidak wajar, kerana tanah buat masa ini cuma boleh digunakan untuk tujuan pertanian dan keterpencilan kerana jambatan yang hendak dibina masih sedang dibina dan tidak siap, dan potensi terbaik untuk tanah tersebut adalah untuk penternakan haiwan. Secara ringkas, nilai tanah tersebut dengan itu tidak boleh disamakan dengan tanah besar di Seberang Perai. Dalam kes ini, hakim telah memutuskan bahawa award sebanyak RM15,000 adalah adil, memandangkan segala-galanya. Oleh kerana peguam perayu telah gagal meyakinkan mahkamah tentang sebaliknya, tiada alasan yang baik atau yang sah untuk mengganggu penghakiman hakim perbicaraan yang arif (lihat ms 208D-G).]

Notes

For cases on compensation, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1210-1223.

Appeal from: Land Reference No 15-1 of 1993 (High Court, Pulau Pinang)

Ghazi bin Ishak (Edward Andrew with him) (*Ghazi & Lim*) for the appellant.

Alizatul Khair bte Osman Khairuddin (State Legal Adviser, Pulau Pinang) for the respondent.

Abu Mansor JCA (delivering judgment of the court): We have dismissed the appeal of the appellant/applicant against the award of compensation of RM15,000 per acre given by the learned judge on 9 October 1995. We heard arguments and unanimously rejected the appeal holding that the compensation awarded was fair and reasonable.

The subject land is situated in Pulau Batu Kawan approximately 27km to the south of Butterworth town. It is separated from the mainland

A by Sungai Jejawi in the north and in the south is Sungai Tengah and to the west is the Straits of Melaka. To get to Pulau Batu Kawan one has to resort to using the ferry from Bukit Tambun to Pengkalan Utama Batu Kawan. A bridge was at the relevant time yet to be built. A section of Batu Kawan Estate is planted with palm oil and some areas were under rubber and some areas under fruit trees or dusun.

B The material date when the government valuer inspected the subject land was on 11 October 1990. He visited the subject land again on 16 October 1990. A private valuer made visits to the subject land on 22 and 30 April 1991.

C What could be gathered from the government valuer's report was that the island's communication with the mainland was by ferry provided free of charge by the government. The ferry was in service for 12 hours a day and five vehicles could be transported across at a time. At the time of the government valuer's visit, a bridge to the island was being built by the JKR and in October 1990, it was 20% completed and was scheduled to be ready in April 1992 or thereabouts.

D According to the town planner, the use of the subject land was for agriculture and the highest use was for animal husbandry. In his opinion, the planner was unable to see how the subject land could have a good development potential because of the then shortcomings of the subject land and the surrounding areas as described above.

E Based on his opinion that the land was for agriculture, the government valuer gave the land value as follows:

	<i>Lot</i>	<i>Per acre</i>
	274	RM 7,284.50
F	126, 248, 252 and 235	RM 7,689.19
	135	RM14,164.30

G Before the learned trial judge, the parties did not call any witness but applied to put in written submissions. In its written submissions, the appellant submitted that the subject land, according to valuer Talhar & Wong, had good potential as industrial land which fact was not denied by the state legal adviser on behalf of the collector but the material consideration was whether the subject land had immediate potential or the potential was remote. It cannot be denied that whatever potential the subject land had, in view of its conditions and location and the poor communication at the time of inspection from the mainland, must and had to be considered as remote.

H The learned judge in the court below observed that on 13 September 1995, Mokhtar Sidin J (as he was then) had considered in another case the value of a piece of land Lot 272 in the same area in Batu Kawan similar in all respects ie in size, etc, to the subject land in the present appeal. Mokhtar Sidin J fixed the value of the land in the case before him at RM15,000.

The applicants were told by the learned judge at first instance that he was mindful of following Mokhtar Sidin J and he adjourned the hearing to 18 September 1995 if parties wanted to make further submissions and to bring witnesses if they so wish. The result was that counsel for the appellant, En Ghazi bin Ishak, chose not to add anything more and the learned state legal adviser pointed to the court that the subject land, in this appeal, was smaller in size than that of the land acquired in the judgment of Mokhtar Sidin J. The learned judge in the present appeal decided to fix the value of the subject land also at RM15,000 per acre giving his reason for awarding RM15,000 per acre for the whole land irrespective of their size, unlike what the collector did and after considering their potentiality for development.

It is also to be noted that the learned trial judge in making an award of RM15,000 per acre had adhered to the principle that the smaller the lot, the better the price when sold to a willing buyer.

The learned trial judge considered that the claim of the applicant for RM40,000 per acre was not appropriate, having in mind the land presently could be used for agriculture and its remoteness as the bridge being built was still under construction and not ready and the best potential for the land was for animal husbandry. In short, the learned trial judge held that the value of the land could not be equated to mainland land in Seberang Perai. For want of any suitable comparable compensation to assess the subject land in Batu Kawan, the learned trial judge relied on the land acquisition in Bertam Estate, Seberang Perai, where 330 acres in area was acquired in 1981 where the award was fixed at RM13,000 per acre and finally settled at RM15,000 per acre. The said land in Bertam Estate was far better located than the land in our appeal and the learned trial judge held that the award of RM15,000 was fair, all things considered.

We were unanimous in agreeing with the learned trial judge and after hearing and considering the submissions of learned counsel for the appellant, we concluded that he failed to persuade us and we upheld the submission of the learned state legal adviser for the respondent. As we said, we were unanimous in holding that there is no good or valid reason why we should disturb the well considered judgment of the learned trial judge. Hence, we dismiss the appeal with costs to the respondent.

Appeal dismissed.

Reported by David Lai

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